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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE
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12 DEREK TUCSON, ROBIN SNYDER,
13 MONSIEREE DE CASTRO, and ERIK
14 MOYA-DELGADO,

15 Plaintiffs,

16 v.

17 CITY OF SEATTLE, ALEXANDER
18 PATTON, TRAVIS JORDAN,
19 DYLAN NELSON, JOHN DOES (#1-
20 4) AND JANE DOES (#1-2),

21 Defendants.
22

23 CASE NO. C23-17 MJP
24

25 ORDER GRANTING STIPULATED
26 PROTECTIVE ORDER
27

28 1. PURPOSES AND LIMITATIONS

29 Discovery in this action is likely to involve production of confidential, proprietary, or
30 private information for which special protection may be warranted. Accordingly, the parties
31 hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The
32 parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket
33 protection on all disclosures or responses to discovery, the protection it affords from public
34

1 disclosure and use extends only to the limited information or items that are entitled to confidential
 2 treatment under the applicable legal principles, and it does not presumptively entitle parties to
 3 file confidential information under seal.

4 2. **“CONFIDENTIAL” MATERIAL**

5 “Confidential” material may include the following documents and tangible things
 6 produced or otherwise exchanged: (1) medical, psychological, employment, financial and family
 7 related records of plaintiff, defendants and/or third parties (including personal financial, medical,
 8 psychological or family related materials that are relevant to the action; personal financial,
 9 medical, psychological or family related materials, that are not relevant to this action will be
 10 redacted); (2) records that could implicate privacy rights of the individual defendants, plaintiff
 11 or third parties, including, but not limited to, personal identifying information (“PII”) such as
 12 date of birth, social security number, employee ID number, personal home address, phone
 13 number, e-mail address, criminal record number, driver’s license number, state identification
 14 number, private communications, social media content, and protected expressive activities; (3)
 15 personal financial information; (4) passport information; (5) immigration status; (6) video
 16 recordings within correctional facilities; (7) video recordings from officer body camera; (8) any
 17 information protected from release by statute and exempt from public disclosure; (9) police
 18 personnel files; (10) unsustained police internal investigations and disciplinary files; (11)
 19 unsustained complaints of police misconduct; and (12) non-public tactical policies and
 20 procedures and training protocols.

21 3. **SCOPE**

22 The protections conferred by this agreement cover not only confidential material (as
 23 defined above), but also (1) any information copied or extracted from confidential material; (2) all
 24 copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
 conversations, or presentations by parties or their counsel that might reveal confidential material.

However, the protections conferred by this agreement do not cover information that is in
 the public domain or becomes part of the public domain through trial or otherwise.

1 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

2 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
 3 or produced by another party or by a non-party in connection with this case only for evaluation
 4 of the material or of the case, prosecuting and/or defending the case, evaluation experts and
 5 expert opinions or attempting to settle this litigation. Confidential material may be disclosed only
 6 to the categories of persons and under the conditions described in this agreement. Confidential
 7 material must be stored and maintained by a receiving party at a location and in a reasonably
 8 secure manner that ensures that access is limited to the persons authorized under this agreement.

9 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
 10 ordered by the court or permitted in writing by the designating party, a receiving party may
 disclose any confidential material only to:

11 (a) the receiving party’s counsel of record in this action, as well as employees
 12 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

13 (b) the officers, directors, and employees (including in house counsel) of the
 14 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
 agree that a particular document or material produced is for Attorney’s Eyes Only and is so
 15 designated;

16 (c) experts and consultants to whom disclosure is reasonably necessary for
 17 this litigation and if provided copies of said material, have signed the “Acknowledgment and
 18 Agreement to Be Bound” (Exhibit A);

19 (d) the court, court personnel, and court reporters and their staff;

20 (e) copy or imaging services retained by counsel to assist in the duplication
 21 of confidential material, provided that counsel for the party retaining the copy or imaging service
 22 instructs the service not to disclose any confidential material to third parties and to immediately
 return all originals and copies of any confidential material;

23 (f) during their depositions, witnesses in the action to whom disclosure is
 24 reasonably necessary, or who have signed the “Acknowledgment and Agreement to Be Bound”

1 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
2 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
3 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
4 under this agreement;

5 (g) the author or recipient of a document containing the information or a
6 custodian or other person who otherwise possessed or knew the information; and

7 (h) mediators and their staff.

8 4.3 Filing Confidential Material. Before filing confidential material or discussing or
9 referencing such material in court filings, the filing party shall confer with the designating party,
10 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will
11 remove the confidential designation, whether the document can be redacted, or whether a
12 motion to seal or stipulation and proposed order is warranted. During the meet and confer
13 process, the designating party must identify the basis for sealing the specific confidential
14 information at issue, and the filing party shall include this basis in its motion to seal, along with
15 any objection to sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures
16 that must be followed and the standards that will be applied when a party seeks permission from
17 the court to file material under seal. A party who seeks to maintain the confidentiality of its
18 information must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the
19 party filing the motion to seal. Failure to satisfy this requirement will result in the motion to
seal being denied, in accordance with the strong presumption of public access to the Court's
files.

20 5. DESIGNATING PROTECTED MATERIAL

21 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
22 or non-party that designates information or items for protection under this agreement must take
23 care to limit any such designation to specific material that qualifies under the appropriate
24 standards. The designating party must designate for protection only those parts of material,
documents, items, or oral or written communications that qualify, so that other portions of the

1 material, documents, items, or communications for which protection is not warranted are not
 2 swept unjustifiably within the ambit of this agreement.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
 4 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
 5 unnecessarily encumber or delay the case development process or to impose unnecessary
 6 expenses and burdens on other parties) expose the designating party to sanctions.

7 If it comes to a designating party's attention that information or items that it designated
 8 for protection do not qualify for protection, the designating party must promptly notify all other
 9 parties that it is withdrawing the mistaken designation.

10 5.2 Manner and Timing of Designations. Except as otherwise provided in this
 11 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
 12 ordered, disclosure or discovery material that qualifies for protection under this agreement must
 13 be clearly so designated before or when the material is disclosed or produced.

14 (a) Information in documentary form: (*e.g.*, paper or electronic documents
 15 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
 16 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that
 17 contains confidential material. If only a portion or portions of the material on a page qualifies
 18 for protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by
 19 making appropriate markings in the margins).

20 (b) Testimony given in deposition or in other pretrial proceedings: the parties
 21 and any participating non-parties must identify on the record, during the deposition or other
 22 pretrial proceeding, all protected testimony. If a party or non-party desires to protect confidential
 23 information at trial, the issue should be addressed during the pre-trial conference.

24 (c) Other tangible items: the producing party must affix in a prominent place
 25 on the exterior of the container or containers in which the information or item is stored the word
 26 "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection,
 27 the producing party, to the extent practicable, shall identify the protected portion(s).

1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
2 designate qualified information or items does not, standing alone, waive the designating party's
3 right to secure protection under this agreement for such material after a meet and confer process.
4 If the parties cannot agree to the proposed designation the issue shall be brought to the attention
5 of the Court. Upon timely correction of a designation, as set forth above, the receiving party
6 must make reasonable efforts to ensure that the material is treated in accordance with the
provisions of this agreement.

7 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

8 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
9 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
10 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
11 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
challenge a confidentiality designation by electing not to mount a challenge promptly after the
original designation is disclosed.

12 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
13 regarding confidential designations without court involvement. Any motion regarding
14 confidential designations or for a protective order must include a certification, in the motion or
15 in a declaration or affidavit, that the movant has engaged in a good faith meet and confer
16 conference with other affected parties in an effort to resolve the dispute without court action.
17 The certification must list the date, manner, and participants to the conference. A good faith
18 effort to confer requires a face-to-face meeting or a telephone conference.

19 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
20 intervention, the designating party may file and serve a motion to retain confidentiality under
21 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
22 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
23 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on

1 other parties) may expose the challenging party to sanctions. All parties shall continue to
 2 maintain the material in question as confidential until the court rules on the challenge.

3 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**
 4 **LITIGATION**

5 If a party is served with a subpoena or a court order issued in other litigation that compels
 6 disclosure of any information or items designated in this action as "CONFIDENTIAL," that
 7 party must:

8 (a) promptly notify the designating party in writing and include a copy of the
 subpoena or court order;

9 (b) promptly notify in writing the party who caused the subpoena or order to
 10 issue in the other litigation that some or all of the material covered by the subpoena or order is
 11 subject to this agreement. Such notification shall include a copy of this agreement; and

12 (c) cooperate with respect to all reasonable procedures sought to be pursued
 by the designating party whose confidential material may be affected.

13 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

14 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
 15 material to any person or in any circumstance not authorized under this agreement, the receiving
 16 party must immediately (a) notify in writing the designating party of the unauthorized
 17 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,
 18 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms
 19 of this agreement, and (d) request that such person or persons execute the "Acknowledgment
 20 and Agreement to Be Bound" that is attached hereto as Exhibit A.

21 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**
 22 **MATERIAL**

23 When a producing party gives notice to receiving parties that certain inadvertently
 24 produced material is subject to a claim of privilege or other protection, the obligations of the

1 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
 2 provision is not intended to modify whatever procedure may be established in an e-discovery
 3 order or agreement that provides for production without prior privilege review. The parties agree
 4 to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

5 **10. NON TERMINATION AND RETURN OF DOCUMENTS**

6 Within 60 days after the termination of this action, including all appeals, each receiving
 7 party must delete or destroy all confidential material that was produced by other parties or
 8 nonparties, including all copies, extracts and summaries thereof.

9 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
 10 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
 11 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
 12 product, even if such materials contain confidential material.

13 The confidentiality obligations imposed by this agreement shall remain in effect until a
 14 designating party agrees otherwise in writing or a court orders otherwise.

15 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

16 /s/ Jessica Leiser with permission
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 Assistant City Attorneys
Attorneys for Defendants

1 *Attorneys for Plaintiffs*

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5 PURSUANT TO STIPULATION, IT IS SO ORDERED

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10 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of
any documents in this proceeding shall not, for the purposes of this proceeding or any other
federal or state proceeding, constitute a waiver by the producing party of any privilege
applicable to those documents, including the attorney-client privilege, attorney work-product
protection, or any other privilege or protection recognized by law.

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12 The clerk is ordered to provide copies of this order to all counsel.

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14 Dated June 7, 2023.


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Marsha J. Pechman
United States Senior District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on [date] in the case of *Derek Tucson, et al. v. City of Seattle, et al.*, 2:23-cv-00017-MJPI agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date:

City and State where sworn and signed:

Printed name:

Signature: